

EXHIBIT A

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LEAH GRAHAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
UNLIMITED JURISDICTION**

LEAH GRAHAM, an individual;

Plaintiff,

v.

BAYADA HOME HEALTH CARE, INC, a
Pennsylvania Corporation; TY'KEIVIOUS
CURRY, an individual; and DOES 1 through
10, inclusive;

Defendants.

Case No. **24STCV06027**

**COMPLAINT FOR MONETARY AND PUNITIVE
DAMAGES**

1. Discrimination Based on Sex/Gender [Cal. Gov't Code §12940(a)];
2. Harassment Based on Sex/Gender [Cal. Gov't Code §12940(j)];
3. Whistleblower Retaliation [Cal. Labor Code 1102.5 and 6310];
4. Discrimination Based on Disability [Cal. Gov't Code §12940(a)];
5. Retaliation in Violation of FEHA [Cal. Gov't Code §§12940(h) and §12940(m)(2)];
6. Failure to Prevent Discrimination and Harassment [Cal. Gov't Code §12940(k)];
7. Wrongful Termination in Violation of Public Policy.

DEMAND FOR JURY TRIAL

NOSRATILAW, A PROFESSIONAL LAW CORPORATION
1801 CENTURY PARK EAST, STE., 840, L.A., CA 90067

Plaintiff LEAH GRAHAM (hereinafter "Plaintiff") brings this action against Defendant BAYADA HOME HEALTH CARE, INC, a Pennsylvania Corporation; Defendant TY'KEIVIOUS CURRY, an individual; and DOES 1 through 10, inclusive and alleges as to herself and her own acts, and upon information and belief as to all other matters, as follows:

NATURE OF ACTION

1. This action is brought pursuant to California statutory and decisional laws. Plaintiff alleges that California statutory and decisional laws prohibit the conduct by Defendants, as alleged herein, and therefore Plaintiff is entitled to monetary relief on the basis that Defendants violated such statutes and decisional laws.

PARTIES

2. At all times relevant for purposes of this Complaint, LEAH GRAHAM ("Plaintiff" or "Ms. GRAHAM"), has been a resident of the State of California.

3. Plaintiff is informed and believes, and thereon alleges that at all times relevant for purposes of this Complaint, Defendant BAYADA HOME HEALTH CARE INC., ("BAYADA") was a Pennsylvania Corporation doing business in the State of California.

4. Plaintiff is informed and believes, and thereon alleges that at all times relevant for purposes of this Complaint, Defendant TY'KEIVIOUS CURRY ("CURRY"), is an individual, who has been a resident of the State of California.

5. BAYADA is an "employer" as defined by California *Government Code* sections 12926(d), 12940(a), 12940(h) and 12940(j)(4)(A) and the California Labor Code.

6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants named herein as DOES 1 through 10, inclusive, and therefore sues Defendants by such fictitious names. Defendants DOES 1 through 10, at all times relevant for purposes of this Complaint were employees, agents, officers and/or members of the board of directors of Defendant. Plaintiff will amend this Complaint to allege the true names and capacities of the Defendants designated herein as DOES 1 through 10, inclusive, when they have been ascertained.

7. Plaintiff is informed and believes, and on that basis alleges, that Defendants designated herein as DOES 1 through 10, inclusive, are responsible in some manner for the acts, events and

occurrences alleged herein, and caused or contributed to the damages sustained by Plaintiff.

8. Plaintiff is informed and believes, and on that basis alleges, that at all times relevant for purposes of this Complaint, the Defendants designated herein as DOES 1 through 10, inclusive, acted as the agents, employees, directors, officers, co-venturers, and partners of the named Defendant and such fictitiously-named Defendants. Each of them, while acting in the course and scope of their agency, employment, corporate capacities, and partnership, performed the acts and conduct hereinafter alleged, and said acts and conduct were ratified and approved by each Defendant.

JURISDICTION & VENUE

9. Defendants BAYADA HOME HEALTH CARE INC. and DOES 1 through 10 are subject to suit under the California Fair Employment and Housing Act ("FEHA") as they regularly employ five or more persons in the State of California. *Gov't Code* §12926(d). FEHA prohibits discrimination, harassment, and retaliation on the basis of race, sex, color, national origin, disability, ancestry, and age, among other acts, by an employer against an employee.

10. At all times during Plaintiff's employment with Defendants, his home base for employment was in California.

11. Plaintiff has exhausted all administrative remedies necessary and has timely brought this action. (Plaintiff's DFEH Complaint and Right to Sue Notice are attached as Exhibit 1).

12. Jurisdiction and venue in this county and division is proper because the events giving rise to each and every of the following causes of action, which are described below, occurred within this judicial district in the State of California. Furthermore, the relief sought through this Complaint is within the jurisdiction of this Court because the damages are more than \$25,000.00.

FACTS COMMON TO ALL CAUSES OF ACTION

13. On or around November 28, 2022, BAYADA hired Plaintiff as a Communications and Content Manager under the Diversity, Equity, and Inclusion Office ("DEI"). Plaintiff is an Asian American woman.

14. Plaintiff's job duties revolved around providing education and training to promote DEI at BAYADA.

15. In or around December 2022, during a company webcast, a panelist became offended

1 by the use of “X-mas” as opposed to “Christmas.” Plaintiff explained to the panelist that the “X” stood
2 for Christ within the religion of Christianity and provided a link to an article as a source. Immediately
3 after, Community Outreach Manager, Defendant CURRY, without reason, took issue with Plaintiff’s
4 position and accused her of being unprofessional. Plaintiff’s Director Joseph Wendover (“Mr.
5 Wendover”) who witnessed the interaction, informed Plaintiff not to worry about the negative
6 comment.

7 16. On or around March 7, 2023, Plaintiff and CURRY were tasked with arranging
8 meetings with BAYADA’s Employee Resource Chairs (“Chairs”). Plaintiff suggested to Defendant
9 CURRY that they should meet with the Chairs who failed to submit proposals. CURRY was offended
10 at Plaintiff’s suggestion and told her she wasn’t a “team player.” Presumably, CURRY believed he
11 should have initiated the meeting with the Chairs and not Plaintiff.

12 17. Plaintiff was confused by CURRY’s irrational behavior. Following the bizarre
13 interaction, Plaintiff spoke to Mr. Wendover about the team structure, specifically, Plaintiff
14 complained about CURRY’s ongoing and warrantless critique of her. Plaintiff also informed Mr.
15 Wendover that CURRY bragged about only working 20 hours a week and stealing from the company
16 (i.e., by not working 40 hours a week but still receiving full pay). Mr. Wendover confirmed that he
17 had heard similar comments by CURRY.

18 18. On or around March 10, 2023, Plaintiff spoke to CURRY via phone about what
19 occurred on or around March 7, 2023. During this conversation, CURRY became verbally combative
20 toward Plaintiff and yelled, “I’ve never said I only work 20 hours a week.” Plaintiff had never been
21 spoken down to in such a demeaning way.

22 19. On or around March 12, 2023, as a result of CURRY’s aggression towards her, Plaintiff
23 experienced panic attacks and sought professional help to address the work-related stress and
24 subsequent symptoms.

25 20. On or around March 13, 2023, Plaintiff spoke via phone to BAYADA’s Head of Total
26 Rewards, Diversity and Inclusion, and Human Resources Strategy, Rekha Daniel-Kimani (“Ms.
27 Daniel-Kimani”). During the conversation, Plaintiff made a complaint about CURRY’s harassing
28 behavior toward her and the fact that he [CURRY] bragged about only working 20 hours a week.

1 Plaintiff also expressed her concern of retaliation by CURRY as a result of her protected complaint.

2 21. On or around March 14, 2023, Plaintiff spoke to Mr. Wendover via Zoom regarding
3 the phone and text message interactions she had experienced with CURRY on or around March 10,
4 2023. Plaintiff complained to Mr. Wendover that CURRY was verbally abusive towards her. Mr.
5 Wendover did not do anything to redress her complaint.

6 22. On or around March 17, 2023, Plaintiff met Ms. Daniel-Kimani in person for lunch and
7 was blindsided by Defendant CURRY's attendance. Plaintiff felt uncomfortable by his presence given
8 the numerous complaints she had made against him. Moreover, the meeting was not substantive to
9 Plaintiff's complaints, as for the majority of the time, Ms. Daniel-Kimani spoke exclusively to
10 CURRY about non-work-related topics. At no point were Plaintiff's complaints discussed.

11 23. On or around March 20, 2023, after her initial complaints had not been sufficiently
12 addressed, Plaintiff sent an email to Ms. Daniel-Kimani and Mr. Wendover. In that email, Plaintiff
13 reasserted her complaint of harassment against CURRY. Plaintiff listed multiple instances, including
14 occasions where CURRY was verbally abusive toward her and would offload his work responsibilities
15 onto her. Plaintiff complained that this was negatively impacting her mental health and work
16 productivity. Again, neither Ms. Daniel-Kimani nor Mr. Wendover did anything to stop CURRY's
17 harassment.

18 24. On or around March 21, 2023, Plaintiff visited BAYADA's Headquarters in New
19 Jersey and met with Mr. Wendover. During their meeting, Mr. Wendover told Plaintiff to cease
20 complaining about CURRY's behavior. Mr. Wendover also instructed Plaintiff to stop contacting Ms.
21 Daniel-Kimani about CURRY. Mr. Wendover then disclosed that a female worker at BAYADA
22 falsified a sexual harassment claim against another company employee and was fired; Plaintiff felt
23 this was an indirect way of telling her to drop her complaints against CURRY. This confirmed that
24 management at BAYADA did not care about addressing Plaintiff's complaints and putting an end to
25 CURRY's harassment.

26 25. On or around March 26, 2023, due to the continued harassment by CURRY, Plaintiff
27 became so stressed and anxiety-ridden that she sought mental health treatment.

28 26. On or around April 4, 2023, Mr. Wendover responded to Plaintiff's March 20, 2023,

1 email. Mr. Wendover's response directly contradicted what he had told Plaintiff during their in-person
2 meeting on or around March 21, 2023. As a result, Plaintiff contacted Human Resources to submit
3 another protected complaint.

4 27. On or around April 5, 2023, Plaintiff spoke to Human Resources Manager, Keri
5 Huenycutt ("Ms. Huenycutt"), and complained about CURRY's harassment in addition to Mr.
6 Wendover and Ms. Daniel-Kimani's failure to take any remedial action. Plaintiff explained the
7 previous incidents involving CURRY and the history of her previous protected complaints to Mr.
8 Wendover and Ms. Daniel-Kimani. Ms. Huenycutt did not indicate a plan for resolution or initiate an
9 investigation into CURRY's behavior.

10 28. On or around April 7, 2023, Plaintiff spoke to Mr. Wendover via Zoom and complained
11 once more about CURRY's continuous harassing behavior and the negative impact of such behavior
12 on her mental health. Mr. Wendover again refused to take action to protect Plaintiff.

13 29. On or around April 24, 2023, BAYADA required that Plaintiff and CURRY attend a
14 Diversity Movement Conference. Despite being aware of Plaintiff's multiple complaints against
15 CURRY, Mr. Wendover still suggested that she [Plaintiff] share an Uber to the airport with CURRY.

16 30. While at the conference and in the presence of other BAYADA employees, including
17 Mr. Wendover, CURRY began to verbally attack Plaintiff. For approximately two hours, CURRY
18 spoke down to Plaintiff and made statements, "I'm a powder keg," and "I'm the more aggressive one
19 in this situation." CURRY's aggression escalated to the point where a BAYADA employee, Mr.
20 Petershein, intervened and asked CURRY to allow Plaintiff to speak. However, this only enraged
21 CURRY and he continued his harassment toward Plaintiff. CURRY did not speak or treat men in the
22 same aggressive and berating way that he spoke and treated Plaintiff.

23 31. On or around April 25, 2023, Plaintiff spoke to Ms. Daniel-Kimani and Mr. Wendover.
24 She expressed how unsafe she felt working with and being in the presence of CURRY and refused to
25 be alone with him. Plaintiff affirmatively stated that she would no longer tolerate CURRY's behavior.
26 Instead of protecting Plaintiff, Ms. Daniel-Kimani and Mr. Wendover became defensive and intended
27 to minimize the gravity of the situation.

28 32. On or around April 26, 2023, Plaintiff had a Zoom call with Ms. Daniel-Kimani about

1 CURRY's continuous harassment. Ultimately, Ms. Daniel-Kimani told Plaintiff to stop contacting
2 HR. This was Plaintiff's eighth complaint against CURRY without BAYADA taking any action.

3 33. On or around April 27, 2023, Plaintiff spoke to Senior Partner of Human Resources,
4 Jim Aromando ("Mr. Aromando"), via phone. Mr. Aromando explained to Plaintiff that CURRY had
5 filed a complaint claiming that Plaintiff's accusations against him were false. Mr. Aromando explained
6 to Plaintiff the consequences of making false accusations to Human Resources. In a feeble attempt to
7 get rid of Plaintiff, Mr. Aromando presented Plaintiff with various severance options. When Plaintiff
8 protested, Mr. Aromando presented her with an ultimatum, either to accept the severance and leave
9 the company or have BAYADA initiate an investigation into CURRY's claims. Plaintiff informed Mr.
10 Aromando that she had not lied about any of the complaints brought against CURRY and that she
11 gladly welcomed any investigation.

12 34. Following her conversation with Mr. Aromando, Plaintiff texted Ms. Huenycutt stating
13 she believed her complaints were being covered up. Ms. Huenycutt responded that she was instructed
14 to direct all conversations to Mr. Aromando.

15 35. On or around April 29, 2023, due to the work-related stress surrounding the issues with
16 CURRY, Plaintiff continued to struggle with her mental health.

17 36. On or around May 2, 2023, as CURRY's harassment continued, Plaintiff requested to
18 Mr. Wendover that any meetings in which she had to be present with CURRY be recorded. Mr.
19 Wendover declined the request and made a callous remark stating Plaintiff should not attend an award
20 ceremony due to her ongoing mental health condition.

21 37. On or around May 5, 2023, the harassment experienced by Plaintiff and ratified by
22 BAYADA was so intolerable that Plaintiff's health care provider ordered her to take medical leave
23 due to diagnoses of depression, anxiety, and panic attacks. Plaintiff's medical leave was set to end on
24 May 18, 2023.

25 38. On or around May 19, 2023, Plaintiff returned to work from her medical leave and
26 began to experience retaliation. Upon her return, Plaintiff did not have access to her work-related
27 accounts. On or around the same day, Mr. Wendover sent Plaintiff an email and requested she meet
28 with the third-party investigator. Plaintiff was not prepared to meet with the investigator and did not

1 have access to her work-related accounts.

2 39. In or around the week of May 22, 2023, Plaintiff was given access to her work email
3 and employee portal, but her access to other programs remained suspended. During this week there
4 were team meetings and trainings to which Plaintiff was not invited; despite always being present in
5 the past.

6 40. On or around May 24, 2023, Plaintiff met with the third-party investigator, Sarah
7 Morgan ("Ms. Morgan").

8 41. On or around May 25, 2023, Mr. Wendover sent an email to Plaintiff and complained
9 that she had several outstanding tasks with past due deadlines. Mr. Wendover knew Plaintiff had just
10 returned from medical leave and the outstanding tasks were past due because she had been on leave.
11 Plaintiff responded to Mr. Wendover and stated that she was not obligated to work on her assignments
12 while on leave and that deadlines needed to be shifted due to her leave of absence. Soon after, Plaintiff
13 contacted Ms. Morgan to complain about Mr. Wendover's behavior as she believed it to be retaliatory.

14 42. On or around May 30, 2023, Plaintiff sent an email to Mr. Wendover, Ms. Daniel-
15 Kimani, Mr. Aromando, and copied Ms. Morgan, Ms. Smith, and Ms. Huenycutt. Plaintiff complained
16 that due to a lack of BAYADA's resolve of CURRY's harassment, she would be setting boundaries
17 to protect herself. These boundaries included leaving any meeting where she felt unsafe by CURRY's
18 behavior. Plaintiff did not receive a response to her email.

19 43. On or around June 2, 2023, Plaintiff attended a virtual meeting with Mr. Aromando and
20 Ms. Daniel-Kimani. Plaintiff requested a status update on the third-party investigation and a copy of
21 the report; they both refused. Instead, BAYADA terminated Plaintiff's employment. Mr. Aromando
22 stated, "We are letting you go for communication issues, conflict, [and] lack of trust in colleagues."

23 44. However, BAYADA's termination of Plaintiff was merely pretext for unlawful
24 discrimination, harassment, and retaliation. At the time of her termination, Plaintiff had made a total
25 of ten protected complaints. BAYADA failed to protect Plaintiff from Defendant CURRY and instead
26 retaliated after multiple complaints by terminating her employment.

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **DISCRIMINATION BASED ON SEX/GENDER [Cal. Gov't Code §12940(a)]**

3 (Against BAYADA and DOES 1 through 10, inclusive)

4 45. Plaintiff alleges and incorporates by reference paragraphs 1 through 44 of this
5 Complaint as if fully alleged herein.

6 46. At all times relevant for purposes of this Complaint, the California Fair Employment
7 and Housing Act ("FEHA") was in full force and effect and binding on Defendant. Under *Government*
8 *Code* section 12940(a), the FEHA makes it unlawful for an employer, on the basis of sex/gender, "to
9 discharge the person from employment" or "to discriminate against the person in compensation or in
10 terms, conditions, or privileges of employment."

11 47. Plaintiff is a member of a protected class because of her female sex/gender.

12 48. At all relevant times, Plaintiff was performing her job competently for Defendant.

13 49. As detailed above, Plaintiff was treated differently in compensation, terms, conditions,
14 and privileges of employment based on her sex/gender.

15 50. On or around June 2, 2023, Plaintiff was subjected to an adverse employment action
16 when she was terminated from her employment.

17 51. Plaintiff's sex/gender is a substantial motivating reason for Defendant terminating
18 Plaintiff. The circumstances suggest Plaintiff was discriminated against based on her female gender
19 after she brought multiple complaints against CURRY, a male, for harassment. When Plaintiff
20 continued to report the escalation of CURRY's behavior, Plaintiff was outright instructed to stop
21 complaining. Mr. Wendover compared her to another BAYADA female employee who had
22 supposedly made a fake sexual harassment complaint and was ultimately terminated. He insinuated
23 that if Plaintiff did not cease her complaints, she would ultimately end up terminated like the unknown
24 BAYADA employee who complained about sexual harassment.

25 52. BAYADA never took Plaintiff's complaints seriously. However, when Defendant
26 CURRY (the male aggressor) complained about Plaintiff, BAYADA initiated an investigation and
27 brought in a third-party investigator.

28 53. As a proximate result of Defendant's conduct, Plaintiff has suffered actual,

consequential, and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment-related opportunities for growth in her field and damage to her professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages together with prejudgment interest pursuant to Civil Code Sections 3287 and/or 3288 and/or any other provision of law providing for prejudgment interest.

54. As a proximate result of the wrongful acts of Defendant, Plaintiff has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress and will likely incur medical expenses as a result. Plaintiff is informed and believes and thereon alleges that she will continue to experience said emotional suffering for a period in the future she cannot presently ascertain, all in an amount subject to proof at the time of trial.

55. As a proximate result of the wrongful acts of Defendant, Plaintiff has been forced to hire attorneys to prosecute her claims herein and has incurred and is expected to continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover such attorneys' fees and costs under California Government Code Section 12965 (b).

56. The acts taken toward Plaintiff were carried out by and/or ratified by Defendant and/or managing agent employees of Defendant acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to injure and damage Plaintiff, thereby justifying an award to her of punitive damages in a sum appropriate to punish and make an example of Defendant.

57. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this Court and requests relief as described in the PRAYER below.

SECOND CAUSE OF ACTION

HARASSMENT BASED ON SEX/GENDER [Gov't Code §12940(i)]

(Against ALL Defendants and DOES 1 through 10, inclusive)

58. Plaintiff alleges and incorporates by reference paragraphs 1 through 44 of this Complaint as if fully alleged herein.

59. At all times relevant for purposes of this Complaint, the FEHA, Gov't Code § 12940(j) was in full force and effect and binding on Defendants. FEHA makes it unlawful for an employer, on

1 the basis of sex/gender, “to harass an employee.”

2 60. Plaintiff is a member of a protected class because of her female sex/gender.

3 61. Defendant CURRY subjected Plaintiff to unwelcomed harassment based on Plaintiff’s
4 female gender.

5 62. A reasonable woman in Plaintiff’s circumstances would have also considered the work
6 environment to be hostile, intimidating, offensive, oppressive, or abusive.

7 63. Plaintiff considered the work environment to be hostile, intimidating, offensive,
8 oppressive, or abusive.

9 64. Defendant CURRY’s harassment of Plaintiff was severe and pervasive and created a
10 hostile work environment. Defendant CURRY berated Plaintiff and spoke down to her. Defendant
11 CURRY would say things that would allude to his “power” or “dominance” as a ‘man’ over a woman.
12 During a conference, Defendant CURRY referred to himself as a “power keg” and “the aggressive
13 one.” The harassment became so intolerable that Plaintiff refused to be in the presence of Defendant
14 CURRY. CURRY’s treatment of Plaintiff demonstrated that she was not a valued employee due to
15 her female gender. Defendant CURRY did not treat other similarly situated male employees like he
16 treated Plaintiff.

17 65. Defendants’ conduct as alleged above constituted unlawful harassment in violation of
18 the FEHA.

19 66. Defendant BAYADA was well aware of CURRY’s harassment yet failed to take
20 appropriate corrective action. Plaintiff made several complaints about CURRY’s harassing behavior
21 to Mr. Wendover, Ms. Daniel-Kimani, Mr. Aromando, Ms. Morgan, Ms. Smith, and Ms. Huenycutt
22 yet they all failed to take any remedial action. As a result, Plaintiff was subjected to a hostile work
23 environment.

24 67. As a proximate result of Defendant’s conduct, Plaintiff has suffered actual,
25 consequential, and incidental financial losses, including without limitation, loss of salary and benefits,
26 and the intangible loss of employment-related opportunities for growth in her field and damage to her
27 professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such
28 amounts as damages together with prejudgment interest pursuant to Civil Code Sections 3287 and/or

1 3288 and/or any other provision of law providing for prejudgment interest.

2 68. As a proximate result of the wrongful acts of Defendant, Plaintiff has suffered and
3 continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional
4 distress and will likely incur medical expenses as a result. Plaintiff is informed and believes and
5 thereon alleges that she will continue to experience said emotional suffering for a period in the future
6 she cannot presently ascertain, all in an amount subject to proof at the time of trial.

7 69. As a proximate result of the wrongful acts of Defendants, Plaintiff has been forced to
8 hire attorneys to prosecute her claims herein and has incurred, and is expected to continue to incur,
9 attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover attorneys' fees and
10 costs under California Government Code section 12965, subdivision (b).

11 70. Plaintiff has been generally damaged in an amount within the jurisdictional limits of
12 this Court and requests relief as described in the PRAYER below.

13 **THIRD CAUSE OF ACTION**

14 **WHISTLEBLOWER RETALIATION [Labor Code § 1102.5]**

15 (Against BAYADA and DOES 1 through 10, inclusive)

16 71. Plaintiff alleges and incorporates by reference paragraphs 1 through 44 of this
17 Complaint as if fully alleged herein.

18 72. Labor Code section 1102.5 prohibits employers from retaliating against employees
19 who engage in protected "whistleblowing" activities when the employee has reasonable cause to
20 believe that the information discloses a violation of state or federal statute. *Diego v. Pilgrim United*
21 *Church of Christ* (2014) 231 Cal.App.4th 913, 923.

22 73. In addition, Labor Code § 1102.5 subd. (b) forbids retaliation if the employee disclosed,
23 or the employer believes he/she disclosed "to a person with authority over the employee or another
24 employee who has the authority to investigate, discover, or correct the violation or noncompliance."

25 74. According to the recent decision by the California Supreme Court in *Lawson v. PPG*
26 *Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, courts must apply the framework prescribed by
27 statute in Labor Code section 1102.6 rather than the test set forth in *McDonnell Douglas Corp. v.*
28 *Green* (1973) 411 U.S. 792. Once an employee-whistleblower establishes by a preponderance of the

1 evidence that retaliation was a contributing factor in the employee's termination, demotion, or other
2 adverse action, the employer then bears the burden of demonstrating by *clear and convincing evidence*
3 that it would have taken the same action "for legitimate, independent reasons." (Lab. Code, § 1102.6,
4 added by Stats. 2003, ch. 484, § 3, pp. 3518–3519).

5 75. Under the Fair Employment and Housing Act ("FEHA"), California Government Code
6 section 12940 et seq., it is an unlawful employment practice for an employer to discriminate against
7 the person in the terms, conditions, or privileges of employment on the basis of sex/gender. It also an
8 unlawful employment practice for an employer to harass an employee on the basis of sex/gender. It is
9 also an unlawful employment practice for employers to requesting and/or utilizing a reasonable
10 accommodation of finite medical leave.

11 76. As alleged above, Plaintiff engaged in protected activities when she made numerous
12 complaints of harassment against CURRY. Plaintiff also engaged in protected activities when she
13 made complaints of retaliation after her return from medical leave. In total, Plaintiff made twelve
14 protected complaints to various superiors and BAYADA Human Resources personnel.

15 77. On or around May 30, 2023, Plaintiff engaged in protected activity by making her most
16 recent complaint of harassment against CURRY to Mr. Wendover, Ms. Daniel-Kimani, Mr.
17 Aromando, and copied Ms. Morgan, Ms. Smith, and Ms. Huenycutt. On or around June 2, 2023, only
18 two business days after Plaintiff's most recent complaint of harassment, Plaintiff was subjected to an
19 adverse employment action when she was terminated from her employment.

20 78. Plaintiff had a reasonable belief that Defendants' harassing practices violated state or
21 federal law.

22 79. Based on the temporal proximity of Plaintiffs' protected activities and the subsequent
23 retaliatory treatment, Plaintiff's protected activities was a contributing factor to her termination.

24 80. As a proximate result of Defendant's conduct, Plaintiff has suffered actual,
25 consequential, and incidental financial losses, including without limitation, loss of salary and benefits,
26 and the intangible loss of employment-related opportunities for growth in her field and damage to her
27 professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such
28 amounts as damages together with prejudgment interest pursuant to Civil Code Sections 3287 and/or

3288 and/or any other provision of law providing for prejudgment interest.

81. As a proximate result of the wrongful acts of Defendant, Plaintiff has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress and will likely incur medical expenses as a result. Plaintiff is informed and believes and thereon alleges that she will continue to experience said emotional suffering for a period in the future she cannot presently ascertain, all in an amount subject to proof at the time of trial.

82. As a proximate result of the wrongful acts of Defendant, Plaintiff has been forced to hire attorneys to prosecute her claims herein, and has incurred and is expected to continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover attorneys' fees and costs under California Code of Civil Procedure sections 1021.5 and 1102.5, subdivision (j).

83. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this Court and requests relief as described in the PRAYER below.

FOURTH CAUSE OF ACTION

DISCRIMINATION BASED ON DISABILITY IN VIOLATION OF THE FEHA

[Gov't Code §12940(a)]

(Against BAYADA and DOES 1 through 10, inclusive)

84. Plaintiff alleges and incorporates by reference paragraphs 1 through 44 of this Complaint as if fully alleged herein.

85. At all times relevant for purposes of this Complaint, the California Fair Employment and Housing Act ("FEHA") was in full force and effect and binding on Defendant. Under *Government Code* section 12940(a), the FEHA makes it unlawful for an employer, on the basis of disability, whether actual or perceived, "to discharge the person from employment" or "to discriminate against the person in compensation or in terms, conditions, or privileges of employment."

86. In the present matter, Defendant discriminated against Plaintiff on the basis of her disability. Plaintiff suffered from depression, anxiety, and panic attacks. Her medical condition was a limitation on her ability to work, as evidenced by her need for leave.

87. During Plaintiff's employment, Plaintiff was performing competently in the position she held.

1 88. As outlined above, Plaintiff was subjected to adverse employment action when she was
2 terminated shortly after returning from medical leave.

3 89. On or around June 2, 2023, Plaintiff was subjected to an adverse employment action
4 when she was terminated from her employment. Plaintiff was terminated less than two weeks after
5 returning from medical leave due to her anxiety, depression, and panic attack disabilities. The
6 circumstances suggest discriminatory motive due to the proximity of Plaintiff's termination with her
7 leave for her disability.

8 90. As a proximate result of Defendant's conduct, Plaintiff has suffered actual,
9 consequential, and incidental financial losses, including without limitation, loss of salary and benefits,
10 and the intangible loss of employment-related opportunities for growth in her field and damage to her
11 professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such
12 amounts as damages together with prejudgment interest pursuant to Civil Code Sections 3287 and/or
13 3288 and/or any other provision of law providing for prejudgment interest.

14 91. As a proximate result of the wrongful acts of Defendant, Plaintiff has suffered and
15 continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional
16 distress and will likely incur medical expenses as a result. Plaintiff is informed and believes and
17 thereon alleges that she will continue to experience said emotional suffering for a period in the future
18 she cannot presently ascertain, all in an amount subject to proof at the time of trial.

19 92. As a proximate result of the wrongful acts of Defendant, Plaintiff has been forced to
20 hire attorneys to prosecute her claims herein and has incurred and is expected to continue to incur
21 attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover such attorneys' fees
22 and costs under Government Code section 12965(b) and/or any other provision of law providing for
23 attorneys' fees and costs.

24 93. Plaintiff has been generally damaged in an amount within the jurisdictional limits of
25 this Court and requests relief as described in the PRAYER below.

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FIFTH CAUSE OF ACTION**RETALATION IN VIOLATION OF THE FEHA - [Cal. Gov't Code §§12940(h) and §12940(m)(2)]**

(Against BAYADA and DOES 1 through 10, inclusive)

94. Plaintiff alleges and incorporates by reference paragraphs 1 through 44 of this Complaint as if fully alleged herein.

95. It is unlawful for an employer "to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part." Gov. Code, § 12940, subd. (h). It is unlawful for an employer to "retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted." Gov. Code, § 12940, subd. (m).

96. As alleged above, Plaintiff engaged in protected activities when she made numerous complaints of harassment against CURRY. Plaintiff also engaged in protected activity when she made a request for a reasonable accommodation of finite medical leave. Plaintiff engaged in further protected activity when she made complaints of retaliation after her return from medical leave. In total, Plaintiff made twelve protected complaints to various superiors and BAYADA Human Resources personnel.

97. On or around May 19, 2023, Plaintiff returned to work from her medical leave. On or around May 30, 2023, Plaintiff engaged in protected activity by making her most recent complaint of harassment against CURRY to Mr. Wendover, Ms. Daniel-Kimani, Mr. Aromando, and copied Ms. Morgan, Ms. Smith, and Ms. Huenycutt. On or around June 2, 2023, only two business days after Plaintiff's most recent complaint of harassment and less than two weeks after her return from medical leave, Plaintiff was subjected to an adverse employment action when she was terminated from her employment.

98. There is a casual link between Plaintiff's protected activity and the Defendant's adverse employment action based on the temporal proximity of the protected activities and adverse employment actions as set forth above. Defendant's reason for termination was pretextual as set forth

1 above. Defendant's conduct as alleged above constituted unlawful retaliation in violation of the
2 FEHA.

3 99. As a proximate result of Defendant's conduct, Plaintiff has suffered actual,
4 consequential, and incidental financial losses, including without limitation, loss of salary and benefits,
5 and the intangible loss of employment-related opportunities for growth in her field and damage to her
6 professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such
7 amounts as damages together with prejudgment interest pursuant to Civil Code Sections 3287 and/or
8 3288 and/or any other provision of law providing for prejudgment interest.

9 100. As a proximate result of the wrongful acts of Defendant, Plaintiff has suffered and
10 continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional
11 distress and will likely incur medical expenses as a result. Plaintiff is informed and believes and
12 thereon alleges that she will continue to experience said emotional suffering for a period in the future
13 she cannot presently ascertain, all in an amount subject to proof at the time of trial.

14 101. As a proximate result of the wrongful acts of Defendant, Plaintiff has been forced to
15 hire attorneys to prosecute her claims herein and has incurred, and is expected to continue to incur,
16 attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover attorneys' fees and
17 costs under California Government Code section 12965, subdivision (b).

18 102. Plaintiff has been generally damaged in an amount within the jurisdictional limits of
19 this Court and requests relief as described in the PRAYER below.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT IN VIOLATION OF**

22 **THE FEHA - [Cal. Gov't Code §12940(k)]**

23 (Against BAYADA and DOES 1 through 10, inclusive)

24 103. Plaintiff alleges and incorporates by reference paragraphs 1 through 44 of this
25 Complaint as if fully alleged herein.

26 104. At all times herein mentioned, the California Fair Employment and Housing Act
27 ("FEHA"), Gov't Code § 12900, et seq., was in full force and effect and binding on Defendants. The
28 FEHA requires Defendants, among other things, "to take all reasonable steps necessary to prevent

1 discrimination and harassment from occurring.” Gov’t Code §12940(k).

2 105. In perpetrating the above-described acts and failures to act, Defendant and its agents
3 violated these provisions by failing to take all reasonable steps necessary to prevent such
4 discrimination based on disability from occurring. In violation of Gov’t Code § 12940(k), these acts
5 and failures to act include, but are not limited to, the following:

- 6 (a) Having no policies, practices and procedures and/or failing to implement policies,
7 practices and procedures and/or having ineffective policies, practices, and procedures
8 regarding Defendants’ obligations to refrain from discrimination and harassment;
9 (b) Having no policies, practices and procedures and/or failing to implement policies,
10 practices and procedures and/or having ineffective policies, practices, and procedures
11 regarding the handling of complaints of discrimination and harassment;
12 (c) Failing to provide any and/or adequate training, education, or information to their
13 personnel, and most particularly to management and supervisory personnel with
14 regard to policies and procedures regarding preventing discrimination and
15 harassment; and
16 (d) Failing to take permanent remedial steps reasonably calculated to end the current
17 harassment and deter future harassment from the same offender or others

18 106. During the entire relevant period, Defendant failed to take all reasonable steps to
19 prevent discrimination and/or harassment, and such discrimination and/or harassment was condoned,
20 encouraged, tolerated, sanctioned, and ratified.

21 107. During the entire relevant period, Defendant failed to provide any and/or adequate
22 training, education, and/or information to their personnel, and most particularly to management and
23 supervisory personnel with regard to policies and procedures regarding discrimination or harassment
24 on the basis of sex/gender or disability.

25 108. During the entire relevant period, Defendant failed to take reasonable steps to prevent
26 discrimination from being inflicted against Plaintiff, resulting in Plaintiff being terminated.

27 109. As a proximate result of Defendant’s conduct, Plaintiff has suffered actual,
28 consequential, and incidental financial losses, including without limitation, loss of salary and benefits,

1 and the intangible loss of employment-related opportunities for growth in her field and damage to her
 2 professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such
 3 amounts as damages together with prejudgment interest pursuant to Civil Code Sections 3287 and/or
 4 3288 and/or any other provision of law providing for prejudgment interest.

5 110. As a proximate result of the wrongful acts of Defendant, Plaintiff has suffered and
 6 continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional
 7 distress and will likely incur medical expenses as a result. Plaintiff is informed and believes and
 8 thereon alleges that she will continue to experience said emotional suffering for a period in the future
 9 she cannot presently ascertain, all in an amount subject to proof at the time of trial.

10 111. As a proximate result of the wrongful acts of Defendant Plaintiff has been forced to
 11 hire attorneys to prosecute her claims herein and has incurred and is expected to continue to incur
 12 attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover such attorneys' fees
 13 and costs under *Government Code* section 12965(b) and/or any other provision of law providing for
 14 attorneys' fees and costs.

15 112. Plaintiff has been generally damaged in an amount within the jurisdictional limits of
 16 this Court and requests relief as described in the PRAYER below.

17 **SEVENTH CAUSE OF ACTION**

18 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

19 (Against BAYADA and DOES 1 through 10, inclusive)

20 113. Plaintiff alleges and incorporates by reference paragraphs 1 through 44 of this
 21 Complaint as if fully alleged herein.

22 114. California recognizes a tort claim of wrongful discharge based on a violation of
 23 fundamental and substantive public policy. *Tameny v. Atlantic Richfield Company* (1980) 27 Cal. 3d
 24 167, 164.

25 115. Under the Fair Employment and Housing Act ("FEHA"), California has a fundamental
 26 and substantive public policy that prohibits employers from harassing and discriminating against
 27 employees in the terms, conditions, or privileges of employment on the basis of sex/gender and
 28 disability.

116. Pursuant to Labor Code § 1102.5, California has a fundamental and substantive public policy that prohibits employers from retaliating against employees who engage in protected “whistleblowing” activities when the employee has reasonable cause to believe that the information discloses a violation of state or federal statute.

117. As set forth above, Defendants terminated Plaintiff in violation of fundamental and substantive public policies.

118. As a proximate result of Defendant’s conduct, Plaintiff has suffered actual, consequential, and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment-related opportunities for growth in her field and damage to her professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages together with prejudgment interest pursuant to Civil Code Sections 3287 and/or 3288 and/or any other provision of law providing for prejudgment interest.

119. As a proximate result of the wrongful acts of Defendant, Plaintiff has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress and will likely incur medical expenses as a result. Plaintiff is informed and believes and thereon alleges that she will continue to experience said emotional suffering for a period in the future she cannot presently ascertain, all in an amount subject to proof at the time of trial.

120. The acts taken toward Plaintiff were carried out by Defendant’s officers, directors, and/or managing agents acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner and in conscious disregard for the rights and safety of Plaintiff. Defendant and its agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to an award of punitive damages against Defendant.

121. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this Court and requests relief as described in the PRAYER below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff LEAH GRAHAM prays for judgment as follows:

1. For all actual, consequential and incidental financial losses, including without limitation

NOSRATILAW, A PROFESSIONAL LAW CORPORATION
1801 CENTURY PARK EAST, STE., 840, L.A., CA 90067

- 1 loss of salary and benefits, together with prejudgment interest, according to proof;
- 2 2. For compensatory and general damages in an amount according to proof;
- 3 3. For punitive damages;
- 4 4. For attorney's fees;
- 5 5. For prejudgment and post-judgment interest according to any applicable provision of law,
- 6 according to proof;
- 7 6. For penalties pursuant to Labor Code Section 1102.5;
- 8 7. For Costs of suit;
- 9 8. For Injunctive Relief, and Restitution; and
- 10 9. Such other and further relief as the court deems proper.

11 Dated: March 11, 2024

N O S R A T I L A W
A PROFESSIONAL LAW CORPORATION

By: /s/ Sol Nunez, Esq.
Omid Nosrati, Esq.
Rene M. Maldonado, Esq.
Sol Nunez, Esq.
Attorneys for Plaintiff,
LEAH GRAHAM

DEMAND FOR JURY TRIAL

18 Plaintiff hereby demands a jury trial as provided by California Code of Civil Procedure
19 section 631 and the California Constitution.

20 Dated: March 11, 2024

N O S R A T I L A W
A PROFESSIONAL LAW CORPORATION

23 By: /s/ Sol Nunez, Esq.
24 Omid Nosrati, Esq.
25 Rene M. Maldonado, Esq.
26 Sol Nunez, Esq.
27 Attorneys for Plaintiff,
28 LEAH GRAHAM